

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

CMA.No.2051 of 2015

S.Sankar

.... Appellant/Petitioner

-vs-

1.M.Vigneswaran

2.The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001.

.... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.06.2015 made in M.C.O.P.No.449 of 2013 on the file of the III Additional District Judge, (Motor Accidents Claims Tribunal), Thiruvallur at Poonamallee.

For Appellant : Mr.M.Sivakumar

For R1 : No Appearance

For R2 : Mr.Krishnamoorthy

J U D G M E N T

The appellant is the claimant who filed claim petition in M.C.O.P.No.449 of 2013 on the file of the III Additional District Judge, (Motor Accidents Claims Tribunal), Thiruvallur at Poonamallee, seeking compensation for the injuries sustained by him in the accident that took place on 18.05.2013.

2.According to the appellant, the accident occurred due to rash and negligent driving by the driver of the TATA-ACE belonging to the 1st respondent and insured with the 2nd respondent.

3.The Tribunal considering Ex.A2, Accident Register and Ex.A3, Discharge Summary issued by the Hindu Mission Hospital, wherein it has been stated that the appellant has consumed alcohol, dismissed the claim petition, holding that the appellant after consuming liquor, drove the vehicle on wrong

side and dashed against the vehicle belonging to the 1st respondent, resulting in the accident.

4. Heard the learned counsel for the appellant as well as the 2nd respondent and perused the materials available on record.

5. From the materials on record, it is seen that the respondents have not let in any evidence to show that appellant was in drunken mood, was unstable and he is responsible for the accident. In the judgment in Jose.P.V. Vs. United India Insurance Company Ltd., reported in 2016 1 TNMAC 204 DB Kerala, it has been held that smelling alcohol will not amount to drunken mood and the said person was unstable. In the present case, in the Discharge Summary, it has been stated that the appellant was smelling alcohol and in Ex.A2, Accident Register, it was stated that the appellant had consumed alcohol. In both the documents, it has not been stated that the appellant was in a drunken mood, unstable and under the influence of alcohol. The Tribunal presumed that the appellant drove the vehicle in wrong side and caused accident. The respondents did not let in any evidence to show that the appellant was responsible for the accident and also to disprove the contention of the learned counsel for the appellant that accident occurred only due to the rash and negligent driving by the driver of the TATA-ACE belonging to the 1st respondent.

6. For the above reason, the award dated 09.06.2015 made in M.C.O.P.No.449 of 2013 is set aside and the claim petition is remanded back to the III Additional District Judge, (Motor Accidents Claims Tribunal), Thiruvallur at Poonamallee, to decide both on negligence and quantum of compensation, on merits and in accordance with law. It is open to the parties to let in evidence, if they so desire.

With the above direction, this Civil Miscellaneous Appeal is allowed. No costs.

सत्यमेव जयते

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The III Additional District Judge,
(Motor Accidents Claims Tribunal),
Thiruvallur at Poonamallee.

2.The Section Officer,
VR Section,
High Court, Madras-600 104. (+2 Copies)

+1cc to Mr.C.Prabakaran, Advocate Sr.77315

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.77355

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